personalty, who has possession but does not hold the legal title, must bear the loss in case of the accidental destruction of the property, has been diversely decided. One line of cases holds strictly to what would seem the logical doctrine, 1 MECHEM SALES, § 634, that "the loss follows the title," or relieves the vendee from further liability, on the ground that the consideration for his promise has failed, or that he is a bailee; *Bishop* v. *Minderhout,* 128 Ala. 162, 29 S. 11; *Swallow* v. *Emery,* 111 Mass. 355; *Randle* v. *Stone,* 77 Ga. 501; see also *Arthur* v. *Blackman,* 63 Fed. 536. The other view makes the vendee liable upon his absolute promise, considering that possession and use of the chattel is sufficient consideration to support such promise, or, looking at the situation from the standpoint of equity, regards the vendee as holding the actual title and as standing in the relation of mortgagor to the seller. *Burnley* v. *Tufts,* 66 Miss. 48, 5 S. 627; *Tufts* v. *Griffin,* 107 N. C. 47, 12 S. E. 68, 10 L. R. A. 526; *Tufts* v. *Wynne,* 45 Mo. App. 42; *Osborn* v. *South Shore Lumber Co.,* 91 Wis. 526, 65 N. W. 184.

SCHOOL FUND—INVESTMENT—MUNICIPAL BONDS.—A city, indebted to the constitutional limit, under statutory authority, issued bonds to pay for a waterworks plant, payable out of a special fund, but not pledging the city's credit. The state board accepted these bonds as an investment for the school fund. The city sought to compel the state auditor to receive the bonds and issue a warrant in payment thereof. *Held,* that mandamus should not issue. *State ex rel. City of Port Townsend* v. *Clausen* (1905), — Wash. —, 82 Pac. Rep. 187.

The Washington court decided in *State ex rel. Hellar* v. *Young,* 21 Wash. 391, 58 Pac. 220, that the constitutional clause providing for the investment of school funds in certain public securities limits the investments of said funds to such securities. The court in the principal case based its decision on the ground that the bonds were not municipal bonds in the sense that they were municipal debts or obligations, and so were not within the meaning of the term "municipal bonds," as used in that clause of the state constitution providing for the safe investment of the school fund. After careful search for authority, it appears that this exact point has never before been passed upon by the courts and the decision, while citing no authorities, seems based on sound reasoning.

THEATER—RIGHTS OF TICKET-HOLDER.—Plaintiff purchased reserved seats at defendant's theater. These seats having been removed by order of the city authorities, plaintiff was offered others, which he refused to accept. Becoming noisy he was tendered the price of his tickets and ejected. In an action of trespass for the price of the tickets and for the inconvenience and mortification suffered, it was *Held,* that he could not recover. *Horney* v. *Nixon* (1905), — Pa. —, 61 Atl. Rep. 1088.

A theater ticket is a mere license which may be revoked at the pleasure of the proprietor. *McCrea* v. *Marsh,* 78 Mass. 211; *Johnson* v. *Wilkinson,* 139 Mass. 3; *Greenberg* v. *Turf Assn.,* 140 Cal. 357; *Purcell* v. *Daly* (N. Y. C. D. Ct.) 19 Abb. N. Cas. 301. Revocation may be made at any time before the purchaser has taken the seat to which the ticket entitles him. *Burton* v.

Scherpt, 83 Mass. (1 Allen) 133. After such revocation he is a mere trespasser and may be ejected with such force as is necessary. *Burton* v. *Scherpt* (supra). His only remedy, then, is by an action on contract to recover the money paid, and the damages sustained by the breach of the contract. *Wood* v. *Leadbitter,* 13 M. & W. 837; cases cited supra. However, an action of trespass may lie when insulting language, or unnecessary force has been used in the ejectment. *Drew* v. *Perr,* 93 Pa. 234.

WILLS—ADMISSIBILITY OF TESTATOR'S DECLARATIONS TO SHOW NON-REVOCATION.—Where, in an action to probate a lost will, it was alleged that the will fell into the hands of persons interested in suppressing it, and was suppressed by them, *held,* that declarations by the testator tending to show non-revocation of the will were admissible. *Ewing* v. *McIntyre et al.* (1905), — Mich. —, 104 N. W. Rep. 787.

The question of the admissibility of the testator's declarations concerning the execution, revocation, or contents of his will is one of considerable difficulty, and there is a sharp conflict in the decisions upon it. In some of the states such declarations are admitted as tending to show the state of the testator's mind, their probative value being left to the jury. *In re Johnson* (1874) 40 Conn. 587; *In re Page* (1886) 118 Ill. 576; *Cheever* v. *North* (1895) 106 Mich. 390, 64 N. W. Rep. 455, 37 L. R. A. 561, 58 Am. St. Rep. 499; *Gardner* v. *Gardner* (1896) 177 Pa. St. 218, 35 Atl. Rep. 558; *Gavitt* v. *Moulton* (1903) 119 Wis. 35, 96 N. W. Rep. 395. In Massachusetts and Missouri such evidence is admissible to show state of testator's mind where allegations of fraud are made. *Shailer* v. *Bumstead* (1868) 99 Mass. 112; *Gibson* v. *Gibson* (1857) 24 Mo. 227. In England the testator's declaration concerning the contents of his will were admitted by analogy to the pedigree exception to the hearsay rule. *Sugden* v. *Lord St. Leonards* (1876) L. R. 1 Prob. Div. 154. This case has been cited as authority in the state courts of this country. *Estate of Lambie* (1893) 97 Mich. 50, 56 N. W. Rep. 223. It has however been severely criticized by the United States Supreme Court in the *Throckmorton Case,* where the analogy to the pedigree exception is declared to be merely formal, and by the New York court *In re Kennedy's Will. Throckmorton* v. *Holt* (1900) 180 U. S. 552, 21 Sup. Ct. Rep. 474, 45 L. Ed. 663; *In re Kennedy's Will* (1901) 167 N. Y. 163, 60 N. E. Rep. 442. The states of Nebraska, Arkansas, Missouri, Massachusetts, Kentucky and New Jersey follow the rule laid down in the *Throckmorton* and *Kennedy* cases (supra). in holding such declarations inadmissible except where so closely related to the act as to form part of the res gestæ. *Clark* v. *Turner* (1897), 50 Neb. 290; 69 N. W. Rep. 843, 38 L. R. A. 433; *Leslie* v. *McMurtrie* (1895) 60 Ark. 301, 30 S. W. Rep. 33; *Walton* v. *Kendrick* (1894) 122 Mo. 504, 27 S. W. Rep. 872, 25 L. R. A. 701; *Lane* v. *Moore* (1890) 151 Mass. 87, 23 N. E. Rep. 828, 21 Am. St. Rep. 430. In the principal case the court does not attempt to decide as to the weight of authority between the two rules but holds that in Michigan such declarations are admissible. It is worthy of note that *Sugden* v. *Lord St. Leonards* has not met with entire approval even in England. *Woodward* v. *Gouldstone* (1886), L. R. 11 App. Cas. 469. A recent case, *Atkinson* v. *Morris* [1897] P. 40; 66 L. J. P. 17, 75 L. T. 440, holds that it